

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
GALLATIN RIVER BASIN (41H)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Wayne A. Edsall Trust; McAfee Land Trust;  
River Valley Farms LLC

**CASE 41H-0110-R-2023**  
41H 120462-00

OBJECTOR: Sharon K. DeHaan

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within **10 days** of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this Master's Report. The original objection and a certificate of mailing to all parties on the Service List must be filed with the Water Court. If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

The claim in this case is owned by Wayne A. Edsall Trust, McAfee Land Trust and River Valley Farms LLC ("Claimants"). The claim received an objection from Sharon K. DeHann and an issue remark. The claim was consolidated into Water Court Case 41H-0110-R-2023. To address the objection appearing on the claim, the Court ordered both parties to file settlement documents by May 17, 2023. A Notice of Filing Evidence to Resolve Objection was filed on May 18, 2023.

### **FINDINGS OF FACT**

1. The purpose of Sharon DeHann's objection was to remove the Wayne A. Edsall Trust as an owner of claim 41H 120462-00. A Montana Cadastral map shows that Wayne A. Edsall does not have a claim to 41H 120462-00.

2. Counsel for the Wayne A. Edsall Trust responded directly to the objection via letter in 2019. Wayne A. Edsall Trust agrees with DeHann's objection and does not make any claim under claim 41H 120462-00. Wayne A. Edsall should be removed as an owner of the above listed claim.

3. Claim 41H 120462-00 was decreed with the following issue remark:

DITCH NAME AND MEANS OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

In the May 18, 2023 Notice of Filing Evidence to Resolve Objection, Sharon DeHann and William Flanigan request the removal of point of diversion ID No. 1, the Roy Ditch from the claim. Both parties have stated the Roy Ditch was abandoned prior to July 1, 1973 and a review of the Cadastral Map confirms the non-existence of the Roy Ditch. Point of diversion ID No. 1 should be removed.

### **CONCLUSIONS OF LAW**

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the

Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

### RECOMMENDATIONS

The changes recommended above should be adopted. Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommendations have been made in the state's centralized water right record system.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Wayne A. Edsall Trust  
Wayne A & Marcia J Edsall, Trustees  
3401 McIlhhattan Rd  
Bozeman, MT 59715-8713

McAfee Land Trust  
3160 McIlhhattan Rd  
Bozeman, MT 59715

#### **Service Via Electronic Mail:**

Peter Fritsch  
Peter Fritsch Law Offices  
860 Whitetail Rd  
Whitehall, MT 59759  
(406) 600-6353  
fritschlaw.mt@gmail.com

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 120462-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** RIVER VALLEY FARMS LLC  
6800 DRY CREEK RD  
BELGRADE, MT 59714 8124

MCAFEE LAND TRUST  
3160 MCILHATTAN RD  
BOZEMAN, MT 59715

OWNERSHIP IS IN ESTATE, SEE DOCUMENTATION. TRANSFER PROCESSED TO ADD OWNERS ONLY. INDIVIDUAL PORTIONS WILL BE RECORDED AFTER FINAL DECREE.

**Priority Date:** NOVEMBER 1, 1903

**Type of Historical Right:** FILED

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** DEER CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2	30	1S	6E	GALLATIN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NE	25	1S	5E	GALLATIN
2			N2	30	1S	6E	GALLATIN

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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